

Trevis Butcher
Executive Director, Montanans In Action
8000 Butcher Road
Winifred, Montana 59489

October 26, 2006

Office of General Counsel
Federal Election Commission
999 E Street NW
Washington, D.C. 20463

MUR # 5869

Dear General Counsel:

Please accept this letter as a formal complaint regarding violations of the Federal Election Campaign Laws and Federal Election Commission regulations by the Montana Education Association-Montana Federation of Teachers ("MEA-MFT" or "Respondent").

It has been well-documented in the news media this year that during 2005, the Democratic Party and various "progressive" interest groups identified several states in which ballot initiatives were allowed, and in which federal races—especially those involving incumbent Republicans—were expected to be close. The media has reported that in many of these targeted states, including Nevada, Arizona, Ohio, Colorado, Missouri, and Montana, Democrats and organizations backed by the Democratic Party succeeded in placing measures to increase the minimum wage on the ballot. One strategist for a member of this "progressive" network recently was quoted in a May 23, 2006 msnbc.com story on the Democrats' strategy as stating, "The idea is to get more of our voters to the polls..." A May 6, 2006 story by Charisse Jones in USA Today quoted the same strategist as stating, "That kind of effort can really draw voters out to not only support the minimum wage but to support the candidates who support the minimum wage."

As this Commission has recognized in the past, efforts to support ballot measures that are identified with a certain party and candidate are essentially efforts to support that candidate:

The Commission believes that communications qualifying for a ballot initiative or referendum exemption could well be understood to promote, support, attack, or oppose Federal candidates. As ballot initiatives or referenda become increasingly linked with the public officials who support or oppose them, communications can use the initiative or referenda as a proxy for the candidate, and in promoting or opposing the initiative or referendum, can promote or oppose the candidate.

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OFFICE OF GENERAL COUNSEL

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Commission Final Rules and Explanation and Justification on "Electroneering Communications," 67 Fed. Reg. 65190, 65202 (Oct. 23, 2002).

Upon information and belief, the Democratic Party and allied "progressive" political organizations have followed just such a strategy in several states. They have poured substantial resources into minimum wage campaigns, including the Montana minimum wage campaign, solely for purposes of turning out and motivating voters to support specific Democratic candidates in those states. Montana was chosen for the minimum wage campaign because of Democratic leaders' belief that the incumbent Republican Senator, Conrad Burns, was vulnerable. Jon Tester is the Democratic candidate opposing Senator Burns and has been the beneficiary of the largesse of the Democratic Party and organizations such as the MEA-MFT which have been spending and contributing substantial sums to Montana ballot measures carefully crafted to turn out pro-Tester voters.

On January 31, 2006, "Raise Montana's Committee to Increase the Minimum Wage" was organized to support the ballot proposal for raising the Montana minimum wage, I-151. Over the ensuing ten months, the MEA-MFT has poured tens of thousands of dollars in cash and in-kind contributions of staff time into the I-151 effort. Jim McGarvey, the executive secretary of MEA-MFT's umbrella organization, the Montana AFL-CIO, was quoted in a June 27, 2006 Montana Standard article as stating "Our members played a huge role in gathering signatures, and we are going to continue our efforts so that the 31,000 Montanans making \$5.15 an hour get a \$1-an-hour raise on Jan. 1, 2007." <http://www.mtstandard.com/articles/2006/06/27/newsstate/hjjdjdhcjcghei.txt>. McGarvey added that the AFL-CIO endorsed Tester because he was "serious about working to protect Montana's working families." A flier posted on the website of the AFL-CIO's national segregated fund also endorsed Tester because he "has endorsed the state ballot measure to raise the minimum wage."¹

The Democratic Party has been active in attempting to use the minimum wage initiative to promote Tester and attack Burns. For example, North Carolina Senator John Edwards traveled to Helena, Montana for a rally on August 8, 2006, that was purportedly in support of Montana's minimum wage initiative. See <http://leftinthewest.com/index.php/2006/08/08/minimum-wage-rally-with-john-edwards-helena/>. On August 3, 2006, the Democratic Party web blog featured an article entitled "Will Burns Flip on the Minimum Wage?" which attempted to excoriate Sen. Burns on the issue. See http://www.democrats.org/a/2006/08/will_burns_flip.php.

The Montana Democratic Party has followed suit. It has paid salaries to numerous operatives it recruited from within and without Montana to work toward the

¹ During the same time period, MEA-MFT poured over \$200,000 in cash and tens of thousands of dollars in staff time to oppose another ballot measure, CI-97, that would limit government spending. Upon information and belief, it did so because it believed that CI-97 threatened to bring conservative/libertarian voters to the polls, frustrating Democrats' plans to elect Tester.

election of Tester, and upon information and belief, many of these operatives worked on organizing petition drives for I-151 and another Democratic-supported initiative I-153. In fact, in a recent Montana litigation relating to potential illegalities in the gathering of I-153 signatures, three Democratic operatives submitted affidavits admitting that they were paid by the Montana Democratic Party while working on signature gathering.

Upon information and belief, the Tester campaign has also been involved with the Democratic Party-led effort to support the Montana minimum wage initiative. One of the Democratic Party operatives who submitted an affidavit in the I-151 and I-153 litigation even faxed her affidavit from the "Montanans for Tester" office, indicating the proximity of the Tester campaign's involvement with the ballot measures. Additionally, the Tester campaign's website specifically states his support for increasing the minimum wage, and on January 10, 2006, issued a press release proclaiming his support for the minimum wage measure and trumpeting his past support of minimum wage increases. See <http://www.testersenate.com/2006/01/10/tester-stands-up-for-fair-wages/>. In response to a question about the minimum wage measure at the Butte debate with Senator Burns on September 24, 2006, Tester stated: "One of the good things about the Montana legislature is that we get bills on one topic. If a person votes for it, they vote for it, and we can't skate under part of a bill. I would support the minimum wage increase. I think it's long overdue."

It appears, therefore, that a triangle of organizations—the Democratic Party, the Tester campaign, and the MEA-MFT, are working with each other to promote Montana's minimum wage ballot measure as a means of turning out votes for Tester. The MEA-MFT expenditures on behalf of this measure should be considered expenditures coordinated with either or both of the Tester campaign or the Montana Democratic Party pursuant to 2 U.S.C. §441a(a)(7)(B)(i) and (ii), respectively.

I believe that one corner of the triangle, the Montana Democratic Party, has essentially already acknowledged that its efforts were actually on behalf of Tester, and not simply involvement in state ballot measure activities. Significantly, the Montana Democratic Party seems to have reported to the FEC that the salaries paid to these three operatives during the period they worked on I-153 were "Federal Election Activity Paid Entirely With Federal Funds." A fourth signature gatherer who worked on I-151 also had his salary reported as an expenditure on Federal Election Activity. Assuming the Party was truthful in its Form 3X reporting, it seems to recognize that, consistent with the strategy of the Democratic Party and allied "progressive" organizations nationwide and in Montana, these efforts must be paid for with hard money because they are truly for the purpose of influencing a federal election—Jon Tester's challenge of Conrad Burns.

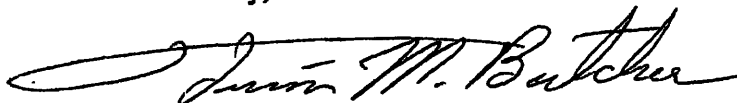
Yet despite the fact that its staff have worked side by side with Democratic Party operatives on I-151 and I-153 over a period of months, and it has similarly poured into these measures tens of thousands of dollars of in-kind staff time and cash contributions, MEA-MFT has not registered as a political committee with the FEC. It strains credulity to argue that the Democratic Party operatives working on the ballot measures were engaging in Federal Election Activity, while the MEA-MFT members working side by

side with them were not. The MEA-MFT's staff time, cash contributions, and expenditures should be reported as coordinated expenditures with either or both of the Tester campaign and the Montana Democratic Party, and should also be subject to the caps applicable to either federal candidates or state committees of national parties. 2 U.S.C. §441a(a)(7)(B)(i) and (ii). Upon information and belief based upon MEA-MFT's Montana reporting for I-151 and I-153, MEA-MFT has spent far in excess of the federal limitations.

Further, almost all of MEA-MFT's spending and contributions on I-151 and I-153 were reported by "MEA-MFT," and not MEA-MFT COPE ("Committee on Political Education"), which may be MEA-MFT's segregated fund. If this is so, then direct spending and contributions from MEA-MFT's main account for the purpose of supporting Jon Tester's election would run afoul of federal law forbidding direct funding of campaigns by labor unions.

In sum, I believe that MEA-MFT's significant financial and staff support for I-151 and I-153 should be exposed for what it really is: a means of using soft money to influence the November 7 federal elections by getting Democratic voters to the polls to elect Jon Tester. I believe the efforts of MEA-MFT, which appear to be in coordination with the Montana Democratic Party and the Tester campaign, should be immediately investigated by the Commission to determine whether they were: (1) coordinated expenditures; and (2) illegal union expenditures on a federal election. Montana voters deserve full reporting and spending cap compliance in the upcoming election.

Sincerely,



Trevis Butcher, Complainant
8000 Butcher Rd.
Winifred, Montana 59489

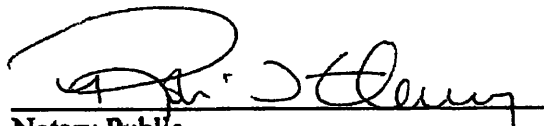
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VERIFICATION

I, Trevis Butcher, being duly sworn upon my oath, state and affirm that the statements of fact made by me in the foregoing complaint are based upon my personal knowledge, or, where I lack personal knowledge, are based upon my information and belief.


Trevis Butcher, Complainant

Signed and sworn to before me, a Notary Public, this 27th day of October, 2006.


Notary Public

My Commission Expires: 3-15-2007

